Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Extension Of Section 272 Obligations Of Southwestern Bell Telephone Co. In The State Of Texas	)	WC Docket No. 02-112

REPLY COMMENTS OF AT&T CORP.

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AT&T Corp. ("AT&T") respectfully submits these reply comments in support of its Petition requesting that the Commission extend application of the separate affiliate and other safeguards of 47 U.S.C. § 272 to Southwestern Bell Telephone Co. ("SWBT") in Texas for an additional three years.

INTRODUCTION AND SUMMARY

In its Petition, AT&T showed that Congress intended the "crucial[ly] important[]"[1] section 272 safeguards to remain in effect until a Bell operating company ("BOC") has lost its ability to exercise market power. AT&T further showed that, because SWBT continues to enjoy market power in Texas today, and will for the foreseeable future, there could be no reasoned basis for now eliminating existing section 272 obligations. In the comments filed in response to AT&T's Petition, these conclusions were endorsed not only by the entities that would be directly harmed by gutting the core section 272 safeguards – SBC's local and long distance rivals – but also the state regulators that have the duty of protecting competition and consumers in Texas.

[1] *Texas 271 Order* ¶ 395.

Only SBC Communications Inc. ("SBC"), SWBT's parent, and other BOCs oppose AT&T's Petition and ask the Commission to allow the section 272 safeguards to sunset in Texas. SBC, however, makes only a token effort to show that SWBT has lost market power in Texas, proffering only its gerrymandered "market share" data derived not from public verified sources, but from SBC's self-serving "E 911 methodology." But the Public Utility Commission of Texas ("Texas PUC") has rigorously investigated competitive conditions in Texas and concluded that facilities-based competition is nearly non-existent, that UNE-based competitors are *losing* market share, that competitive carriers are increasingly being pushed into bankruptcy and out of the market, and that "SWBT's continued dominance over local exchange and exchange access services still hinders the development of a fully competitive market."[2]

In its comments, SBC also attempts to sweep aside the mounting evidence showing that SBC and its BOC subsidiaries are using their local bottlenecks to discriminate systematically against rivals – and, therefore, that in the absence of section 272 safeguards that SBC would have even greater ability to exclude competitors and raise their costs. SBC derides this evidence as the "half-baked" complaints of competitors,[3] but AT&T's Petition, as well as the comments, rely principally on findings by auditors and state and federal regulators. For example, SBC has been penalized *over $1.1 billion* by federal and state regulators as a result of its pervasive violations of provisions of the Communications Act, merger conditions, and section 271 conditions designed to prevent SBC from discriminating against its rivals. Likewise, the work product from SBC's own hand-picked auditors demonstrates that SBC has persistently provided

[2] Texas PUC 272 Sunset Comments at 3, WC Docket No. 02-112, (filed July 25, 2002) ("Texas PUC 272 Sunset Comments").

[3] SBC at 9.

its long distance rivals with network access that is manifestly inferior to the access it provides to its own long distance affiliate.

Unable to rebut this evidence that SWBT is dominant and has, in fact, abused its market power, SBC falls back to its shop-worn argument that the section 272 safeguards should be eliminated because they hobble SBC's ability to compete in long distance markets. SBC's recent statements to the investment community should put this claim to rest once and for all. According to SBC, it already has gone from zero to "near 50 percent" share of the residential long distance customers in Texas and the other SWBT states.[4] Thus, SBC is now the *largest* residential long distance provider in the SWBT states. And in California, SBC has achieved "a retail penetration rate of 13 percent on the consumer side, 10 percent overall" in "less than four months" since SBC commenced long distance service – a level of success that it took MCI nearly a decade to achieve.[5] Whatever "burdens" that section 272 imposes on SBC, one thing is clear: existing section 272 obligations do not prevent SBC from quickly becoming the dominant long distance provider in its local territories. Indeed, SBC's experience only confirms the need to strengthen, rather than abandon, existing protections against discrimination and cross-subsidization.

* * *

The Commission has to date twice been squarely faced with the issue of what standards should govern the sunsetting of section 272 obligations. And the Commission has twice dodged that issue. The Commission must not take a called third strike. The Commission should instead

[4] *See* Statement of Edward Whitacre, CEO, SBC Communications, Transcript, April 24, 2003 Conference Call Addressing First Quarter 2003 Earnings (available at www.sbc.com, Investor Information pages).

recognize that SWBT retains market power in Texas and grant AT&T's Petition to retain the section 272 safeguards in that state for at least another three years.

ARGUMENT

I. THE COMMENTS CONFIRM THAT THE SECTION 272 SAFEGUARDS REMAIN CRITICALLY IMPORTANT IN TEXAS.

A. The Comments Confirm That SWBT Continues To Enjoy Market Power And That Retention Of Section 272 Safeguards Is Necessary To Promote Competition In Texas.

The comments confirm the fundamental underpinnings of AT&T's Petition – that the section 272 safeguards should continue to apply to SWBT because it continues to exercise market power in Texas.[6] As the comments explain,[7] Congress adopted the section 272 safeguards in recognition of the fact that, upon receipt of section 271 authorization, a BOC's local markets in a state will be merely "open" to competition and that some time will necessarily pass before competition sufficient to constrain the exercise of market power by the BOC can develop.[8] The section 272 safeguards are designed to enable regulators to detect and deter post-271 efforts by a BOC to leverage its local market power into competitive interLATA markets. These safeguards are clearly necessary so long as the BOC retains substantial market power, because the BOC has incentives, *inter alia*, "to discriminate in providing exchange access services and facilities that its [long distance] affiliate's rivals need to compete in the interLATA

(. . . continued)

[5] *Id.*

[6] *See* AT&T Petition at 7-14, WC Docket No. 02-112 (filed Apr. 10, 2003) ("AT&T Petition").

[7] MCI at 1-5; Sprint at 5-6; Texas AG at 1-4.

[8] *Non-Accounting Safeguards Order* ¶ 9 ("In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening.").

telecommunications services and information services markets."[9] "This artificial advantage may allow the BOC affiliate to win customers even though a competing carrier may be a more efficient provider in serving the customer."[10] The section 272 structural, accounting and nondiscrimination safeguards are targeted to detect and prevent such market power abuses and thereby to "ensure that competitors of the BOC's [long distance] affiliate have access to essential inputs, namely, the provision of local exchange and exchange access services, on terms that do not discriminate against competitors and in favor of the BOC's affiliate."[11]

Indeed, as MCI shows, "[p]ermitting the SWBT-Texas section 272 safeguards to expire while SWBT remains a dominant carrier would be inconsistent with the Commission's twenty-year history of imposing separate affiliate requirements on dominant LEC participants in the interLATA market."[12] Since its *Fifth Competitive Carrier Order* in 1984, the Commission has required independent LECs to provide interexchange services through a separate affiliate in order to be treated as non-dominant in long distance markets.[13] In light of the fact that the Commission has found that such independent LECs "are less likely to be able to engage in anticompetitive conduct than the BOCs,"[14] *a fortiori*, it would be arbitrary for the Commission to relieve the BOCs of section 272 safeguards so long as they too retain market power.

And, as Texas regulators show, it could not be clearer that effective local competition has failed to develop in Texas and, as a result, that SWBT continues to "possess substantial market

[9] *Id.* ¶ 11.

[10] *Id.* ¶ 12.

[11] *Id.* ¶ 13.

[12] MCI at 2.

[13] *Id.*

[14] *LEC Classification Order* ¶ 190.

power."[15] Facilities-based competition is almost non-existent and "competitors are still dependent upon SWBT for the provision of facilities" necessary to competition – and therefore potentially subject to discriminatory conduct by SWBT. Further, despite the best efforts of the Texas PUC, UNE-based competition is now foundering in Texas; the most recent data show that competitors have *lost* market share in Texas.[16] As the Texas PUC has stressed, "SWBT retains both the incentive and ability to discriminate against competitors and to engage in anti-competitive behavior."[17]

SBC's claims to the contrary cannot withstand scrutiny. SBC asserts, without any backup or detail, that primarily UNE-based competitors in Texas have captured a 22% market share and that share has been steadily growing.[18] No weight can be given to SBC's market share figures, which are not based on public, verified data, but on SBC's self-serving and inaccurate "E 911" database analysis.[19] In stark contrast, the certified data compiled by the Texas PUC show that competitive carriers are actually *losing* market share and now serve less than 15 percent of lines in Texas.[20] SBC's claims are also belied both by SBC's recent statements that

[15] Texas AG at 3.

[16] *Id.*; *see also* MCI at 2.

[17] Texas PUC 272 Sunset Comments at 3.

[18] SBC at 5.

[19] In its filings in the Triennial Review proceeding, AT&T showed that the BOCs' attempts to derive competitive carrier market share using the E911 data base was irredeemably flawed and grossly overstated the extent of competitive entry. *See* AT&T Triennial Review Comments at 181-82, WC Docket No. 01-338, (filed July 17, 2002).

[20] *Scope of Competition in Telecommunications Markets of Texas* (Texas PUC Jan. 2003) at 20.

its winback programs are thriving,[21] and the fact that scores of competitive carriers have recently been pushed into bankruptcy in Texas.[22]

In any event, the Commission has stressed that the section 272 rules should remain in place "until *facilities-based* alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary."[23] This makes sense because the BOC's ability anticompetitively to harm rivals is based on its control of the bottleneck network facilities that are necessary for the provision of interLATA services.[24] The record is undisputed that there is only *de minimis* facilities-based competition in Texas.[25]

Unable to demonstrate that SWBT lacks market power, SBC says that SWBT has no incentive to abuse its dominance. According to SBC, "[a]ny attempt by a BOC to provide inferior service to other interexchange carriers – thereby creating inferior service for its local exchange customers – is more likely to alienate local exchange customers than win new interexchange customers."[26] This is flawed on multiple levels. As an initial matter, the section 272 safeguards are designed not just to detect and prevent such non-price discrimination by BOCs, but also *price* discrimination. For example, the Commission has held that section 272 is a

[21] Sprint at 7-9.

[22] *Scope of Competition in Telecommunications Markets of Texas* (Texas PUC Jan. 2003) at 17.

[23] *Non-Accounting Safeguards Order* ¶ 13 (emphasis added).

[24] MCI Reply at 3. Verizon says (at 5) that AT&T's argument is somehow premised on the notion that "facilities-based competition in the local exchange market is uneconomic and therefore will never serve as an alternative to reliance on BOC facilities," and as a result, AT&T is contending that the section 272 safeguards can never be lifted. That is false. AT&T takes no position here regarding when effective facilities-based competition may or may not fully develop and agrees with Verizon that when effective competition does exist, section 272 safeguards may be unnecessary.

[25] Texas AG at 3 (citing *Scope of Competition in Telecommunications Markets of Texas* (Texas PUC Jan. 2003) at 20-22, (available at www.puc.state.tx.us/telecomm/reports/scope/index.cfm)).

[26] SBC at 7.

valuable tool in preventing the BOCs from using their above-cost access charges to price squeeze long distance rivals.[27] Such price discrimination does not "alienate" BOC local customers, but it can devastate long distance competition.

Further, with regard to non-price discrimination, a BOC can advantage its long distance affiliate without resorting to degrading the access service it provides to rivals to the very low levels quality levels hypothesized by SBC. To the contrary, a BOC *discriminates* when it provides itself with superior service to its long distance affiliate than its rival, even if the service it provides rivals satisfies some minimal levels of standards. And in all events, so long as the BOC enjoys market power and competitive carriers must rely on the BOC to access customers, the BOC loses little by "alienating" customers because the BOC can ensure that *any* long distance carrier that they would use – other than the BOC's affiliate – will receive inferior service.

B. The Comments Confirm That SWBT Continues To Misallocate Costs And To Discriminate Against Unaffiliated InterLATA Competitors.

In its Petition, AT&T provided substantial evidence that that SWBT and its sister-BOCs have cross-subsidized their long distance affiliates and discriminated against unaffiliated interLATA providers.[28] SBC derides such evidence as "half-baked,"[29] but the evidence of SBC's misconduct includes conclusive findings of federal and state regulators that SBC *has* discriminated against competitive carriers. These abuses have resulted in SBC having "been assessed fines, penalties, commitments, or refunds of over $1.1 billion for violations of statutory obligations, merger conditions, and conditions of section 271 approvals at both state and federal

[27] *Non-Accounting Safeguards Order* ¶ 12; *Access Reform Order* ¶¶ 280-82.

[28] AT&T Petition at 14-19.

[29] SBC at 9.

levels."[30] Overall, SBC has "been fined, ordered to make refunds, or compelled to enter consent decrees in more than 160 instances since September 1996."[31] This pattern of anticompetitive conduct reflects SBC's admitted policy of trying to "make our welcome mat smaller than anyone else's."[32]

Notably, as Sprint documents, many of these fines were imposed as a result of SBC's attempts to discriminate against rivals and thwart competition on the merits.[33] And, if anything, these problems are growing worse.[34] For example, SBC was recently fined more than $26 million for violating the SBC-Ameritech merger conditions, including fines for "willfully and repeatedly" violating provisions by causing delays and "forc[ing] competing carriers to expend time and resources in state proceedings trying to obtain what SBC was already obligated to offer."[35] Similarly, the Texas PUC continues to impose substantial fines for SBC's thousands of failures to meet the performance benchmarks that were established to limit anticompetitive activity.[36]

And no amount of spinning by SBC can explain away the results of its biennial audit. Despite conducting a bare-bones audit that failed rigorously to evaluate SBC's compliance with

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[30] Sprint at 12.

[31] *Id.* at 12 n.27.

[32] Peter Burrows, *Telecommunications Pick of the Litter: Why SBC is the Baby Bell to Beat*, Business Week (March 6, 1995).

[33] Sprint at 13-14.

[34] *See* Birch at 3-17.

[35] *Forfeiture Order*, ¶ 1.

[36] *Scope of Competition in Telecommunications Markets of Texas* (Texas PUC Jan. 2003) at 50-52.

section 272,[37] the audit confirms pervasive discrimination by SBC in clear violation of section 272. SBC acknowledges that the audit shows that in many instances it provided competitors with inferior performance relative to its own long distance affiliate, but contends that in some months the data show SBC performed better for competitors than its own affiliate and, therefore, "the data do not show any pattern of discrimination whatsoever."[38] That is clearly not the case with regard to the critical measures cited by AT&T in its Biennial Audit Comments and in its Petition. For example, with regard to completion of DS0 orders by the required due date, the performance data show that SBC's affiliates received better performance in *each* of the last seven months audited – and the largest differences were in the last two months reported, confirming that SBC's performance was decreasing.[39] The data also show that SBC's return interval for firm order confirmations on DS1 and DS3 facilities was longer for SBC's rivals than for its affiliates in *all* 18 of the instances where the measure employed showed a performance difference.[40] Likewise, for restoration of trouble, by both measures SBC's competitors virtually always suffered longer delays than SBC's affiliates.[41]

[37] Even SBC concedes that the audit was not conducted under an attestation standard, but rather a much weaker "agreed-upon procedures" standard. *See* SBC Reply at 11, WC Docket No. 02-112 (filed Aug. 26, 2002). Indeed, the auditors themselves acknowledged that they "were not asked to, and did not conduct an examination, the objective of which would be the expression of an opinion on SBC's compliance with the Section 272 Requirements." Texas PUC Biennial Audit Comments at 6. For these and other reasons, the Texas PUC and the Federal/State Joint Oversight Team concluded that the SBC audit cannot be relied upon to show SBC's compliance with section 272. *See generally* Texas PUC SBC Biennial Audit Comments; *see also* Sprint at 15-17.

[38] SBC at 11.

[39] AT&T Petition at 15.

[40] *See id.* at 15-16.

[41] *See id.* at 16.

Finally, SBC says that evidence showing that it is discriminating against rival long distance carriers is irrelevant because it shows only that violations took place despite the existence of "structural separation."[42] That is false. The above-discussed evidence conclusively shows that SBC has both the incentive and ability to abuse its bottleneck monopolies to impair long distance competition. Section 272, when properly and vigorously enforced, can be an important tool for regulators and rivals to detect BOC anticompetitive conduct. *See infra* Part II.C. The fact that discrimination occurred despite such safeguards demonstrates that regulators should take decisive and prompt action to punish such violations and to extend and strengthen the safeguards to ensure that regulators and competitors can continue to rely on those tools to detect future discrimination by SWBT and other BOCs. Indeed, the existing evidence of SWBT's persistently discriminatory conduct, despite section 272 safeguards, is powerful evidence that it would undertake a broader array of anticompetitive practices if these "crucial[ly] important[]" safeguards were gutted, as SBC now urges. Indeed, that the BOCs have fought so hard to eliminate these safeguards is itself probative of the fact that they view them as constraining their ability to exploit fully their market power.

II. SBC FAILS TO OFFER ANY PLAUSIBLE JUSTIFICATION FOR ELIMINATING CORE SECTION 272 SAFEGUARDS

A. The Commission's Decision To Allow The New York Section 272 Safeguards To Sunset Does Not Provide A Basis For Eliminating Such Obligations On SWBT In Texas.

SBC's principal argument as to why the Commission should allow SWBT's section 272 obligations to sunset in Texas is that the Commission allowed Verizon's section 272 obligations

[42] SBC at 9.

to sunset in New York.[43] But the Commission's decision to sunset the rules in New York does not remotely require the same result in Texas. The appropriate course would be to recognize that the New York decision was unreasoned. But if the Commission must distinguish New York, there are ample grounds in the record upon which to do so.

First, it is unquestioned that local markets in New York are the most competitive in the country and that competitive local carriers continue to make inroads against Verizon.[44] There has also been substantial deployment of bypass facilities in New York, particularly New York City. In contrast, even if SBC were correct that Texas is "*one* of the most competitive states in the country,"[45] local competition in that state is nonetheless foundering. As explained above, the Texas PUC has rigorously examined local competition in Texas and found that competitive carriers are *losing* ground.

Second, as AT&T explained, Texas regulators have made clear that they oppose allowing the section 272 obligations to sunset in Texas. Although SBC attempts to argue that the New York PSC likewise opposed allowing the section 272 obligations to sunset in New York, SBC's tortured reading of the agency's comments cannot withstand review. The New York PSC stated merely that it considered the issue "premature" because Verizon "has no plans to integrate its long distance affiliate into its network operations at this time," and that it would address the "costs and benefits of the separate affiliate and related requirements" when the issue was

[43] SBC at 2; *see also* Verizon at 2-3.

[44] Sprint at 5.

[45] SBC at 2-3

"ripe."[46] Thus, the New York PSC took no position on the ultimate issue in light of Verizon's assurance that it would retain a separate affiliate for at least the near term.

In the alternative, SBC brazenly asserts that the views of the Texas PUC (and state regulators in general) are simply irrelevant in this context because the Commission is not expressly directed by section 272 to consider their views.[47] This claim is contrary to basic principles of administrative law and the Commission's decision to allow SWBT to participate in long distance markets in Texas. The Texas PUC is the entity with the greatest "expertise" regarding local competitive conditions in Texas.[48] And it was for that very reason the Commission accorded "substantial weight"[49] to the Texas PUC's views on whether SWBT's local markets were "open" to competition in deciding SWBT's section 271 application for Texas. Having done so, it would be patently arbitrary agency action for the Commission now simply to ignore the Texas PUC's express findings that SWBT has "continued dominance over local exchange and exchange access services" that enables it to "hinder[] the development of a fully competitive market" – and, therefore, that the section 272 safeguards remain essential.[50]

B. SBC's Claims That Section 272 Safeguards Are Too Costly Are Contrary To Theory And Fact.

SBC also renews its claims that the section 272 safeguards should be eliminated because they are burdensome.[51] But again, SBC offers nothing more than *ipsi dixit* to support its

[46] New York DPS 272 Sunset Comments at 1-2, WC Docket No. 02-112 (filed Aug. 5, 2002).

[47] SBC at 4.

[48] MCI at 5.

[49] *Texas 271 Order* ¶ 4.

[50] Texas PUC 272 Sunset Comments at 3; *see also id.* ("SWBT retains both the incentive and ability to discriminate against competitors and to engage in anti-competitive behavior.").

[51] SBC at 12-15; *see also* Verizon at 7-9.

position. SBC has now had several opportunities to provide hard evidence to support its claims, and its repeated failure to do so speaks volumes.[52]

Moreover, despite SBC's claims that it is hobbled by section 272, its long distance offerings continue to enjoy unprecedented success. According to SBC's Chief Executive Officer, SBC has achieved "near 50 percent" penetration of the consumer long distance market in states other than California where it has offered long distance service prior to April 2003.[53] Thus, SBC is now, by a wide margin, the *largest* residential long distance provider in its Southwestern territories. As to California, Mr. Whitacre claimed that SBC has achieved "a retail penetration rate of 13 percent on the consumer side, 10 percent overall" in "less than four months" since SBC commenced long distance service.[54] These facts simply cannot be squared with SBC's claim that section 272 puts SBC at a "competitive disadvantage[]."[55]

Finally, SBC ignores the fact that the Commission has loosened many of the restrictions that SBC is complaining about. Most notably, SBC is *not* "severely restricted in [its] offerings of competitive bundled services."[56] The Commission has largely eliminated restrictions on bundling, even for dominant carriers like SBC.[57] Thus, SBC and the other BOCs today offer

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[52] Verizon claims to have supported its claims about the costs of section 272 safeguards, particularly the conditions related to the prohibition of sharing operation, installation and maintenance services, *see* Verizon at 7-9, but, as AT&T previously explained, the Verizon declarations are little more than conclusory statements that opine generally about costs, without any specific discussion of how those costs were derived and without any backup material that could be used to verify independently these claims. *See* AT&T 272 Sunset Reply Comments at 18, WC Docket No. 02-112 (filed Aug. 26, 2002).

[53] *See* Statement of Edward Whitacre, CEO, SBC Communications, Transcript, April 24, 2003 Conference Call Addressing First Quarter 2003 Earnings.

[54] *Id*.

[55] SBC at 14.

[56] *Id.* at 15.

[57] *See generally Bundling Order*.

customers a broad array of bundled offerings, including combinations of local, long distance, data and wireless.[58] Indeed, SBC's recent investor briefing states that "[a]verage usage levels for SBC's long distance customers in its Southwestern Bell states are higher than the industry average in those states. This reflects effective marketing and SBC's *strong emphasis on bundling long distance with local calling and services and features.*"[59]

Similarly, the Commission's orders implementing section 272 already have provided numerous opportunities for SBC and its 272 affiliates to share services and take advantage of other economies.[60] Even though these joint activities present risks of anticompetitive behavior, and could also easily have been prohibited entirely, the Commission permitted such activities, which substantially reduced the BOCs' costs of compliance with section 272. Although the BOCs complain (without any hard evidence or supporting declaration) that even these reduced obligations are too burdensome, the fact is that the BOCs have been able to capture unprecedented market shares using affiliates that have only a small fraction of the employees of established long distance carriers.[61]

C. The Existence Of Other Regulatory Protections Is Not A Reason To Gut Section 272

Finally, SBC renews its argument that, despite Congress' decision to impose detailed structural, accounting and transactional safeguards in section 272, the benefits provided by those

[58] *See, e.g.,* http://www01.sbc.com/Products_Services/Residential/1,,616--6-3-1,00.html (SBC's bundled offering);

[59] Sprint at 8 (quoting SBC Investor Briefing) (emphasis added).

[60] *See, e.g.,* WorldCom 272 Sunset Comments at 7-9, WC Docket No. 02-112 (filed Aug. 5, 2002) ("WorldCom 272 Sunset Comments"); Time Warner 272 Sunset Comments at 17-20, WC Docket No. 02-112 (filed Aug. 5, 2002).

[61] *See* WorldCom 272 Sunset Comments at 8; *see also* AT&T 272 Sunset Reply Comments, Selwyn Reply Dec ¶¶ 6-8.

safeguards are minimal, and can be obtained instead by relying on other provisions of the Act and Commission rules.[62] These claims are entirely meritless. Indeed, given that most of the rules that SBC cites were in effect in 1996, Congress would not even have enacted section 272 if it believed those rules could be effective in policing the BOCs' misconduct and eliminating discrimination and cost misallocation. Rather, section 272, when properly implemented and vigorously enforced, provides substantial and unique benefits that promote competition in telecommunications markets.

In particular, the state commission comments previously filed in this docket confirm the enormous value of the section 272 safeguards in detecting, deterring and remedying BOC misconduct. Thus, as the Texas PUC concluded, if section 272 safeguards are eliminated, regulators "will lose a valuable means to ensure [the BOC's] compliance with its obligations to provide access to the local exchange and exchange access markets that [the BOC] controls."[63]

The state commission comments in this proceeding also confirm the value of particular section 272 safeguards, like the biennial audit. The Missouri Public Service Commission reports that "without the section 272 audit process, there is no way to detect and deter discrimination and anti-competitive behavior."[64] Further, the Pennsylvania Public Utilities Commission reports that the separate structure and accounting provisions of section 272 "assist[] the PA PUC in its ability to design rates," and the "ability to readily identify costs and revenues from the business

[62] SBC at 7-8; *see also* Verizon at 5.

[63] Texas PUC 272 Sunset Comments at 3; *see also* Washington UTC 272 Sunset Comments at 3, WC Docket No. 02-112 (filed Aug. 5, 2002).

[64] Missouri PSC 272 Sunset Comments at 4, WC Docket No. 02-112 (filed Aug. 5, 2002); *see also* Washington UTC 272 Sunset Comments at 3 ("maintaining a separate affiliate makes the audit process easier and provides more transparency to the transactions to be audited"); Pennsylvania PUC 272 Sunset Comments at 4, WC Docket No. 02-112 (filed Aug. 5, 2002) ("audits can produce useful information for policymakers such as the PUC").

segment is *critical* to ongoing rate review."[65] And more generally, the Pennsylvania commission asserts that the collapse of separate affiliate requirements would "perpetuate[] what appears to be a continual reduction in available information." *Id.* at 4. As these comments show, section 272 can provide unique, pro-competitive benefits that, contrary to the BOCs' claims, cannot be obtained from other existing rules and provisions of the Act.[66]

In all events, the Commission itself recently rejected the argument that its existing safeguards are a more effective and less costly mechanism for preventing discrimination than structural separation. In the *SBC-Ameritech Merger Order*, the Commission determined that adopting the proposed separate affiliate structure benefited competition because "reliance on existing regulatory safeguards is misplaced."[67] That is because even though the Commission "issues rules to prevent discrimination," it is "impossible for the Commission to foresee every possible type of discrimination."[68] Accordingly, the Commission found that "SBC's offer to establish a separate subsidiary for advanced services is directly responsive" to concerns regarding the Commission's ability to detect discrimination – but achieves that goal in a way that avoids "engaging in detailed regulatory oversight."[69]

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[65] Pennsylvania PUC 272 Sunset Comments at 5.

[66] In this regard, SBC relies heavily on the pro-competitive safeguards found in section 251(g) and in section 251(c), which it asserts will continue to apply and protect competition after section 272 is allowed to sunset. *See* SBC 272 Sunset Comments at 7. But that claim is disingenuous, because SBC and the other BOCs have vigorously contended in other Commission proceedings that the Commission's requirements under those sections should be eliminated or at least drastically cut back.

[67] *Ameritech-SBC Merger Order* ¶ 206.

[68] *See id.* ¶ 220.

[69] *Id.* ¶ 211.

CONCLUSION

For the foregoing reasons, the Commission should issue a rule extending application of section 272 to SWBT in Texas for an additional three years.

Respectfully submitted,

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May 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2003, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: May 19, 2003
Washington, D.C.

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